

1 **LAW OFFICES OF MARC J. WODIN**
2 Marc J. Wodin, Esq. - SBN 79573
3 Elana Bitton, Esq. - SBN. 130835
23901 Calabasas Road, Suite 1076
Calabasas, California 91302
Telephone (818) 595-3490
4 Fax (818) 225-7497
e-mail marc_wodin@wodinlaw.com

5 Attorneys for Defendant CONSECO SENIOR HEALTH INSURANCE COMPANY

7 **UNITED STATES DISTRICT COURT**

8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9 PAMELA THOMPSON, Individually)
and as Personal)
10 Representative of CHARLES)
THOMPSON, Deceased,)
11 Plaintiff,)
12)
13 vs.)
14 CONSECO SENIOR HEALTH)
INSURANCE COMPANY, a)
15 Pennsylvania corporation,)
DOES 1 through XX)
16)
17 Defendant(s).)

CASE NO.: C 07-05437 PJH
[Sonoma County Superior Court
Case No. 241544]

**DEFENDANT'S MOTION FOR AN
ORDER PURSUANT TO LOCAL RULE
6-1 AND 6-3:**

**1. CHANGING THE HEARING DATE
OF DEFENDANT'S MOTION FOR AN
ORDER COMPELLING MEET AND
CONFER/ENFORCING SETTLEMENT,
PRESENTLY SET FOR OCTOBER 29,
2008, TO OCTOBER 1, 2008, THE
DATE OF THE HEARING ON
PLAINTIFF'S MOTION TO ENFORCE
SETTLEMENT, OR;**

**2. CHANGING THE HEARING DATE
ON PLAINTIFF'S MOTION TO
ENFORCE SETTLEMENT FROM
OCTOBER 1, 2008 TO OCTOBER
29, 2008, OR;**

**3. SETTING BOTH MOTIONS FOR
HEARING, TOGETHER, ON SUCH
DATE AS THE COURT DEEMS
APPROPRIATE**

[PROPOSED] ORDER

**(FILED CONCURRENTLY WITH
DEFENDANT'S MOTION FOR AN
ORDER COMPELLING MEET AND
CONFER/ENFORCING SETTLEMENT)**

27 Assigned to the Honorable
28 Phyllis J. Hamilton

1 Defendant CONSECO SENIOR HEALTH INSURANCE COMPANY

2 ("defendant") hereby moves the court, an order

3 1. changing the hearing date on defendant's motion for an
 4 order compelling meet and confer/enforcing settlement and for
 5 sanctions, so that it will be heard on October 1, 2008, the date
 6 of plaintiff's motion to enforce the settlement, or;

7 2. changing the hearing date on plaintiff's motion to
 8 enforce settlement, to October 29, 2008, the date currently set
 9 for hearing on defendant's motion, or;

10 3. setting both motions for hearing, together, on such other
 11 date as the court deems appropriate, and;

12 4. setting a briefing schedule for the motions, if
 13 appropriate.

14 Said motion is made pursuant to Local Rules 6-1 and 6-3, on
 15 the ground that there is good cause to change the time of these
 16 motions so that they will be heard at the same time, and
 17 defendant will be severely prejudiced if that is not done, in
 18 that:

19 On August 27, 2008, plaintiff filed a motion to enforce the
 20 settlement, and for sanctions, set for October 1, 2008. On
 21 September 2, 2008, upon its completion, defendant filed a motion
 22 to compel a meet and confer, and/or to enforce the settlement,
 23 and for sanctions, set for October 29, 2008, the first date the
 24 court then had available for the hearing.

25 Both motions concern the same subject matter, a settlement
 26 reached in this matter, and both seek to enforce the settlement.
 27 However, they seek to enforce the settlement on substantially
 28 different terms. Further, defendant's motion also seeks to have

1 the court order plaintiff's attorney to engage in a meet and
2 confer on matters related to the settlement.

3 Having these motions heard at the same time will allow for a
4 complete, uniform, resolution of the issues related to the
5 settlement and its enforcement. Having them heard at different
6 times creates a substantial danger of incomplete and inconsistent
7 resolution of those issues, and duplication of effort.

8 This relief is necessary, because there is otherwise no way
9 for defendant to have these motions heard at the same time.
10 Defendant has acted diligence in preparing its substantive
11 motion, and bringing this motion.

12 Plaintiff's attorney would not stipulate to the relief
13 sought by this motion.

14

15 DATED: September 2, 2008

LAW OFFICES OF MARC J. WODIN

16

17

By /s/ Marc J. Wodin
MARC J. WODIN

18

Attorneys for Defendant CONSECO
SENIOR HEALTH INSURANCE COMPANY

19

20

21

22

23

24

25

26

27

28

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Local Rules 6-1 and 6-3, the court can change the time on matters filed with the court.

4 The parties mediated this matter, and reached a settlement.
5 Common to such a circumstance, where it is not feasible to then
6 and there prepare a formal, written settlement agreement, a
7 cursory, five sentence memorandum, stating essential terms, was
8 signed, to make the settlement binding, with an express proviso
9 that defendant would provide a Release and Settlement Agreement
10 ("Agreement") which plaintiff and her attorney would sign.

11 Defendant's attorney provided plaintiff's attorney with its
12 standard Agreement, with provisions and language appropriate to
13 such a document, modified for particulars of the settlement.

14 When plaintiff's attorney wrote, questioning two of the
15 provisions, defendant's attorney wrote back that he would be
16 happy to consider changes in the language, and requested that
17 plaintiff's attorney call, so they could discuss them. There was
18 no response to that, and two follow up letters.

19 Plaintiff's attorney then wrote, asserting a new position -
20 that the five sentence memorandum was the settlement agreement,
21 and there could be no comprehensive written settlement agreement.

22 Defendant's attorney responded that this assertion was
23 contrary to the language of the memorandum, and the circumstances
24 under which it was prepared, and was unreasonable. He again
25 offered to meet and confer. Again, there was no response.

26 On August 11, 2008, after defendant filed a Certification
27 that agreed upon consideration (an executed Agreement) had not
28 been provided, the court vacated its prior dismissal.

1 On August 27, 2008, plaintiff filed a motion to enforce the
2 settlement, asserting that the five sentence memorandum is the
3 settlement agreement.

4 Defendant's attorney was also working on a motion, more
5 extensive than plaintiff's motion, which was completed and filed
6 September 2, 2008. It seeks orders 1. that plaintiff's attorney
7 meet and confer over the language of the Release and Settlement
8 Agreement; 2. enforcing the settlement, by ordering plaintiff
9 and her attorney to sign a Release and Settlement Agreement, with
10 such modifications, if any, as the court deems appropriate, or by
11 entering judgment pursuant to the terms of such an Agreement; 3.
12 that plaintiff and/or her attorney pay sanctions.

13 The court advised that defendant's motion could not be heard
14 until October 29, 2008; so the motion was filed for that date.

15 There is good cause to have these motions heard together,
16 and defendant will be severely prejudiced if they are not. They
17 concern the same subject matter, the settlement, which they both
18 seek to enforce, but on substantially different terms. Further,
19 defendant also seeks to have the court order a meet and confer.
20 Hearing them at the same time will allow for a complete, uniform,
21 resolution of the issues related to the settlement. Hearing them
22 at different creates a substantial danger of incomplete and
23 inconsistent resolution of those issues, and will cause
24 unnecessary duplication of effort.

25 || DATED: September 2, 2008

LAW OFFICES OF MARC J. WODIN

By /s/ Marc J. Wodin
 MARC J. WODIN

Attorneys for Defendant CONSECO
SENIOR HEALTH INSURANCE COMPANY